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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 130214139-3542-02]

RIN 0648-XC513

Atlantic Highly Migratory Species; 2013 Atlantic Bluefin Tuna Quota Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; closure.

SUMMARY: NMFS establishes 2013 quota specifications for the Atlantic bluefin tuna (BFT) fishery and closes the incidental Longline category northern and southern area fisheries for large medium and giant BFT for the remainder of 2013. These actions are necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Under the closure, fishing for, retaining, possessing, or landing BFT in the Longline category northern and southern areas is prohibited for the remainder of 2013. The Longline fishery in the Northeast Distant gear restricted area (NED) remains open at this time. The closure is necessary to prevent overharvest of the adjusted Longline category subquotas as finalized in this action.

DATES: The quota specifications are effective June 25, 2013 through December 31, 2013. The closure of the Longline category northern and southern area fisheries is effective 11:30 p.m., local time, June 25, 2013, through December 31, 2013.

ADDRESSES: Supporting documents, including a Supplemental Environmental Assessment and the Fishery Management Plans described below may be downloaded from the HMS website at [www.nmfs.noaa.gov/sfa/hms/](http://www.nmfs.noaa.gov/sfa/hms/). These documents also are available by request to Sarah McLaughlin at the telephone number below.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION: Atlantic bluefin tuna, bigeye tuna, albacore tuna, yellowfin tuna, and skipjack tuna (hereafter referred to as “Atlantic tunas”) are managed under the dual authority of the Magnuson-Stevens Act and ATCA. As an active member of ICCAT, the United States implements binding ICCAT recommendations to comply with this international treaty. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate to carry out ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NMFS.

#### Background

NMFS annually implements BFT quota specifications to adjust the annual U.S. baseline BFT quota to account for any underharvest or overharvest of the adjusted U.S. BFT quota from the prior year.

In May 2011, NMFS prepared an Environmental Assessment (EA)/Regulatory Impact Review/Final Regulatory Flexibility Analysis for a final rule that: 1) implemented and allocated the U.S. BFT quota recommended by ICCAT for 2011 and for 2012 (ICCAT Recommendation 10-03); 2) adjusted the 2011 U.S. quota and subquotas to account for unharvested 2010 quota allowed to be carried forward to 2011, and to account for a portion of the estimated 2011 dead discards up front; and 3) implemented several other BFT management measures (76 FR 39019, July 5, 2011). In that final rule, NMFS implemented the 923.7-mt baseline quota consistent with ICCAT Recommendation 10-03 and set the domestic BFT fishing category subquotas per the allocation percentages established in the 2006 Consolidated HMS FMP and implementing regulations (71 FR 58058, October 2, 2006). The baseline quota and category subquotas are codified and remain effective until changed (for instance, if any new ICCAT BFT Total Allowable Catch (TAC) recommendation is adopted).

At its 2012 annual meeting, ICCAT recommended a one-year rollover of the 1,750-mt TAC as part of ICCAT Recommendation 12-02—Supplemental Recommendation by ICCAT concerning the Western Atlantic Bluefin tuna Rebuilding Program. This amount is expected to allow for continued stock growth under both the low and high stock recruitment scenarios, considering the 2012 ICCAT BFT stock assessment results, which were not substantively different than those of an assessment that ICCAT conducted in 2010. The annual U.S. baseline quota for 2013 continues to be 923.7 mt, and the annual total U.S. quota, including 25 mt to account for bycatch related to pelagic longline fisheries in the NED, continues to be 948.7 mt.

Although it is unnecessary to prepare an EA for quota specifications alone (in accordance with the approach described in the 2006 Consolidated HMS FMP), NMFS has prepared a Supplemental EA to present and analyze updated information regarding the affected environment, including information from a 2012 ICCAT stock assessment for BFT, among other things.

Until the final specifications for 2013 are effective, the existing BFT base quotas continue to apply as codified. (See Table 1, second column.) Although the baseline quota is unchanged this year because the 2012 ICCAT recommendation included the same TAC as the prior recommendation, NMFS is carrying forward underharvest from 2012, consistent with the 2006 Consolidated HMS FMP. Thus, this final action adjusts the quota as appropriate and allowable for the 2013 fishing year. Further background information, including the need for the 2013 BFT quota specifications, was provided in the preamble to the proposed rule (78 FR 21584, April 11, 2013) and is not repeated here.

#### Changes from the Proposed Rule

NMFS determines the amount of BFT quota actually available for the year by adjusting the ICCAT-recommended baseline BFT quota for overharvest or underharvest from the previous fishing year and any accounting for dead discards. For the proposed rule, NMFS used the 2011 estimate of 145.2 mt as a proxy for potential 2013 dead discards, because the BFT dead discard estimate for 2012 was not yet available. In late May 2013, the preliminary 2012 dead discard estimate of 239.5 mt became available from the NMFS Southeast Fisheries Science Center. As anticipated and explained to the public at the proposed rule stage, NMFS is using the more recent dead discard estimate in

this final rule because it is the best available and most complete information NMFS has regarding dead discards.

Based on preliminary data available as of May 31, 2013, BFT landings in 2012 totaled 713.2 mt. Adding the 2012 dead discard estimate (239.5 mt) results in a preliminary 2012 total catch of 952.7 mt, which is 90.9 mt less than the amount of quota (inclusive of dead discards) allowed under ICCAT Recommendation 12-02 (948.7 mt plus 94.9 mt of 2011 underharvest carried forward to 2012, totaling 1,043.6 mt). Thus, the underharvest for 2012 is 90.9 mt. This amount is within the current ICCAT limit on the amount of underharvest that can be carried forward to 2013, which is 10 percent of a country's total quota, and for the United States is 94.9 mt.

As anticipated in the proposed rule, NMFS is accounting up front (i.e., at the beginning of the fishing year) for half of the expected dead discards for 2013, using the best available estimate of dead discards (now the 2012 estimate received as of May 31, 2013), and deducting that portion directly from the Longline category subquota. This is the same approach that NMFS took for the final 2011 and 2012 BFT quota specifications.

Regarding the unharvested 2012 BFT quota, NMFS had proposed to carry 94.9 mt of available underharvest forward to 2013, and distribute half of that amount to the Longline category and half to the Reserve category. NMFS stated that any necessary adjustments to the 2013 specifications would be made in the final rule after considering updated 2012 landings information and the 2012 dead discard estimate. NMFS also stated that it could allocate the amount carried forward in another manner after considering domestic management needs for 2013.

Considering the best available information regarding 2012 landings and dead discards—as well as actual 2013 Longline category BFT landings to date—NMFS is finalizing the 2013 BFT specifications as follows. As shown in the third column of Table 1, NMFS is accounting for half of the 2012 dead discard estimate of 239.5 mt (i.e., 119.75 mt) up front by deducting that portion of estimated longline discards directly from the baseline Longline category subquota of 74.8 mt. If NMFS deducts one half of the dead discard estimate from the Longline category subquota and provide half of the available underharvest, the result is a 2013 adjusted Longline category subquota of less than 1 mt ( $74.8 \text{ mt} - 119.75 \text{ mt} + 45.45 \text{ mt} = 0.5 \text{ mt}$ ). Therefore, NMFS has decided in the final rule to add all of the 2012 underharvest that can be carried forward to 2013 (i.e., 90.9 mt) to the Longline category (fourth column). Thus, the adjusted Longline category subquota would be  $74.8 \text{ mt} - 119.75 \text{ mt} + 90.9 \text{ mt} = 46 \text{ mt}$  (not including the separate 25-mt allocation for the Northeast Distant gear restricted area). In these specifications, NMFS is balancing the need of the pelagic longline fishery to continue fishing for swordfish and Atlantic tunas with the need of directed bluefin fisheries participants to receive their base quota.

In the proposed rule, NMFS stated that any necessary adjustments to the 2013 specifications would be made in the final rule after considering updated 2012 landings information and the dead discard estimate for 2012. NMFS requested public comment and consideration of the possibility that deduction of half of the final estimate of dead discards from the baseline Longline category subquota could result in little to no quota for the Longline category for 2013 prior to application of any available underharvest, as well as the possibility that NMFS may close the Longline category fishery to BFT

retention based on codified quotas and account fully for landings to date in the final specifications, as occurred in 2012 (see 78 FR 21584).

### 2013 Quota Specifications

In this final rule NMFS deducts half of the 2012 dead discard estimate of 239.5 mt directly from the baseline Longline category quota of 74.8 mt and applies the full 90.9 mt allowed to be carried forward to 2013 to the Longline category. This action results in a 46-mt adjusted Longline subquota, not including the 25-mt allocation set aside by ICCAT for the NED (i.e.,  $74.8 \text{ mt} - 119.75 \text{ mt} + 90.9 \text{ mt} = 46 \text{ mt}$ ). For the directed fishing categories (i.e., the Angling, General, Harpoon, Purse Seine categories), as well as the Trap and Reserve categories, NMFS maintains the codified baseline BFT quotas and subquotas that were established in July 2011 (76 FR 39019, July 5, 2011), as proposed.

Thus, in accordance with ICCAT Recommendation 12-02, the domestic category allocations established in the 2006 Consolidated HMS FMP, and regulations regarding annual adjustments at 50 CFR 635.27(a)(10), NMFS establishes BFT quota specifications for the 2013 fishing year as follows, and as shown in the fifth column of Table 1:

General category – 435.1 mt; Harpoon category – 36 mt; Purse Seine category – 171.8 mt; Angling category – 182 mt; Longline category – 46 mt; and Trap category – 0.9 mt.

The Longline category quota of 46 mt is subdivided as follows: 18.4 mt to pelagic longline vessels landing BFT north of 31° N. latitude, and 27.6 mt to pelagic longline vessels landing BFT south of 31° N. latitude. NMFS accounts for landings under the 25-mt NED allocation separately from other Longline category landings. The amount allocated to the Reserve category for inseason adjustments, scientific research

collection, potential overharvest in any category except the Purse Seine category, and potential quota transfers, is 23.1 mt.

As described in the proposed rule, NMFS considers the deduction of half of the dead discard estimate from the Longline category as a transition from the method used for 2007 through 2010, as NMFS continues to develop Draft Amendment 7 to the 2006 Consolidated HMS FMP. Draft Amendment 7 to the 2006 Consolidated HMS FMP will explore related BFT fishery management issues consistent with the need to end overfishing and rebuild the stock. NMFS anticipates that measures in Draft Amendment 7 will address several of the long-standing challenges facing the fishery and will examine, among other things, revisiting quota allocations; reducing and accounting for dead discards; adding or modifying time/area closures or gear-restricted areas; and improving the reporting and monitoring of dead discards and landings in all categories. NMFS anticipates that Draft Amendment 7 will publish in 2013.



Table 1. Final 2013 Atlantic Bluefin Tuna (BFT) Quotas and Quota Specifications (in metric tons)

Category (% Share of Baseline Quota)	Baseline Allocation (per Current ICCAT Recommendation and 2006 Consolidated HMS FMP Allocations)	2013 Quota Specifications		
		Dead Discard Deduction (1/2 of 2012 Estimate of 239.5 mt)	2012 Underharvest to Carry Forward to 2013 (90.9 mt Total)	Adjusted 2013 Fishing Year Quota
Total (100)	923.7*			894.9
Angling (19.7)	182.0 <u>SUBQUOTAS:</u> School 94.9 Reserve 17.6 North 36.5 South 40.8 LS/SM 82.9 North 39.1 South 43.8 Trophy 4.2 North 1.4 South 2.8			182.0 <u>SUBQUOTAS:</u> School 94.9 Reserve 17.6 North 36.5 South 40.8 LS/SM 82.9 North 39.1 South 43.8 Trophy 4.2 North 1.4 South 2.8
General (47.1)	435.1 <u>SUBQUOTAS:</u> Jan 23.1 Jun-Aug 217.6 Sept 115.3 Oct-Nov 56.6 Dec 22.6			435.1 <u>SUBQUOTAS:</u> Jan 23.1 Jun-Aug 217.6 Sept 115.3 Oct-Nov 56.6 Dec 22.6
Harpoon (3.9)	36.0			36.0
Purse Seine (18.6)	171.8			171.8
Longline (8.1)	74.8 <u>SUBQUOTAS:</u> North (-NED) 29.9 NED 25.0* South 44.9	-119.75	+90.9	46 <u>SUBQUOTAS:</u> North (-NED) 18.4 NED 25.0* South 27.6
Trap (0.1)	0.9			0.9
Reserve (2.5)	23.1			23.1

\*25-mt ICCAT set-aside to account for bycatch of BFT in pelagic longline fisheries in the NED. Not included in totals at top of table.

## Comments and Responses

NMFS received a total of 13 written comments to the proposed rule. There were no participants at the two public hearings in Gloucester, MA, and Silver Spring, MD. Few of the comments NMFS received focused specifically on the proposed quota specifications, and those comments supported the proposed adjustment of the 2013 baseline BFT quota and subquotas. Below, NMFS summarizes and responds to all comments made specifically on the proposed rule during the comment period. Most of the comments received were outside the scope of this rule and are summarized under “Other Issues” below.

Comment 1: Several commenters stated they support the proposed rule because it uses the same methodology as in the recent past and allows for continued participation by all user groups.

Response: The approach used for these final 2013 quota specifications is an appropriate continuation of the approach used in 2011 and 2012 as a transition from the method used from 2007 through 2010. Changes in ICCAT’s approach to western BFT management in 2006 (i.e., discontinuation of the dead discard allowance, and a new provision that the western BFT Total Allowable Catch include dead discards) have had implications for NMFS’ domestic management of the fishery, because landings and dead discards must be accounted for within the total U.S. quota (rather than an additional allocation for dead discards). This interim approach balances the needs of the pelagic longline fishery to continue fishing for swordfish and Atlantic tunas with the needs of directed BFT fisheries participants.

Comment 2: The same commenters asked what NMFS would do if the dead discard estimate used to set the specifications is wrong, especially if it is too high and as a result the adjusted quotas are lower than needed. They asked if the difference would ever be reallocated as quota, or if it would be lost.

Response: NMFS notes that the situation posited has not and likely will not occur. Currently, including in these 2013 final specifications, NMFS deducts only half of the estimate of dead discards up front and accounts for the remainder at year-end. Thus, dead discards would have to be substantially higher than the estimate used for the final 2013 quota specifications for there to be a situation in which NMFS would set the final specifications lower than the level necessary for landings and dead discards to stay within the adjusted U.S. quota. The commenter's more general concern seems to go beyond 2013 to ask whether NMFS would consider a prior-year quota adjustment if the preliminary dead discard estimate differed so radically from the later estimate. Given the variability of relevant factors (e.g., the ICCAT rules regarding quota levels and carryover may change, the status of the stock may change, etc.), NMFS cannot speculate about the hypothetical posed because each situation must be addressed based on its unique set of facts.

Comment 3: One commenter stated that NMFS should not carry unharvested quota forward and should instead set the U.S. quota at the level of the ICCAT-recommended quota reduced by the estimate of dead discards.

Response: Carrying forward underharvest (limited to no more than 10 percent of the total U.S. quota) is consistent with the ICCAT recommendation, ATCA, and the BFT quota regulations that implement the western BFT rebuilding plan adopted at ICCAT and

relevant measures in the 2006 Consolidated HMS FMP. The distribution of the 90.9-mt underharvest provides flexibility for existing management needs, particularly to account for dead discards and provide sufficient quota for pelagic longline operations as the fleet continues directed fishing operations for swordfish and other tunas.

Comment 4: One commenter expressed concern that NMFS may, in order to stay within the ICCAT-recommended U.S. quota, limit or close directed BFT fisheries in the event that unused quota, including the Reserve quota, is insufficient to account for Longline category landings overharvests and dead discards.

Response: The United States must account for dead discards within its overall adjusted quota allocation, regardless of in which fishery they occur, to comply with ICCAT recommendations. BFT quota allocations in the 2006 Consolidated HMS FMP were based on historic landings and were established initially in 1992. Baseline quotas were modified in 1995 and 1997, but have remained the same since implementation of the 1999 FMP, when a separate discard allowance was provided for in the ICCAT BFT recommendation. Following ICCAT's elimination of the dead discard allowance and change to include dead discards within TACs in 2006, NMFS has not modified the allocation scheme. For the last several years the United States has accounted for dead discard mortality as part of the domestic specification calculation process, and reported dead discard estimates to ICCAT annually. Regarding the concern about potential closure(s), NMFS manages each fishing category to its adjusted quota for a given year, and it is highly unlikely that NMFS would close a fishery prior to the available quota for that category being met.

Through Amendment 7, NMFS is considering how best to reduce and account for BFT dead discards, as well as methods to improve reporting and monitoring of discards and landings.

Comment 5: One commenter suggested that NMFS anticipate both increased General activity overall in 2013, due to reduced quotas in the groundfish fishery, as well as increased General category participation during the December 2013 period given increased availability of commercial-sized BFT in Hudson Canyon in December 2012.

Response: NMFS recognizes that changes in other commercial fisheries in which BFT fishermen participate, as well as recent changes in BFT availability (as discussed in the Supplemental EA), may result in shifts in fishing effort in the General category. Overall, for 2012, 96 percent of the adjusted General category quota was used, including the 40-mt transfer from the Reserve effective December 15. NMFS will monitor landings closely and may take action to allocate a portion of the Reserve category quota for inseason or annual adjustments to any other quota category following consideration of the regulatory determination criteria regarding inseason adjustments at § 635.27(a)(8). These criteria include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal BFT distribution, abundance, or migration patterns; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds.

## Other Issues

In addition to the few comments specifically on the content of the proposed rule, all 13 written comments raised issues beyond the scope of this rule, regarding HMS management measures generally and the quota allocations in the 2006 Consolidated HMS FMP. Specifically, commenters articulated: concern about the division of the U.S. baseline quota, and stated that priority allocation should be to full-time commercial fish harvesters; concern that the volume of dead discards is negatively impacting directed BFT fishery participants; support for eliminating “regulatory” dead discards and increasing quota use within a fishing year, including year-end transfer of unused quota to a “discard reserve” and more liberal target catch requirements in the NED; support for allocating sufficient quota to cover incidental discards first; concern about recreational landings estimates and fishery monitoring; support for greater opportunities to land trophy BFT; concern about the complexity of the exempted fishing permit process and its effect on biological sampling; and support for changes in U.S. policies regarding ICCAT, including BFT quota negotiations. NMFS anticipates that Amendment 7 to the 2006 Consolidated HMS FMP in 2013 will address many of the issues raised in comments that were outside the scope of the 2013 BFT quota specifications.

### Closure of Longline Category Northern and Southern Area BFT Fisheries

Under § 635.27(a)(3), the total amount of large medium and giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) that may be caught incidentally and retained, possessed, or landed by vessels that possess Longline category Atlantic Tunas permits is 8.1 percent of the baseline annual U.S. BFT quota. NMFS may allocate no more than 60 percent of the Longline category incidental BFT quota for

landing in the area south of 31°00' N. lat. (i.e., the “southern area”), with the remainder allocated for landing in the area north of 31°00' N. lat. (i.e., the “northern area”). As described above, this final action adjusts the Longline category baseline BFT quota to 46 mt, with 18.4 mt allocated to the northern area, and 27.6 mt allocated to the southern area.

In addition to the Longline category quota of 46 mt, 25 mt are allocated, consistent with ICCAT Recommendation 12-02, for incidental catch of BFT by pelagic longline vessels fishing in the NED, an area far offshore the northeastern United States. The NED is the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 35°00' N. lat., 60°00' W. long.; 55°00' N. lat., 60°00' W. long.; 55°00' N. lat., 20°00' W. long.; 35°00' N. lat., 20°00' W. long.; 35°00' N. lat., 60°00' W. long. NMFS accounts for landings under the 25-mt NED allocation separately from other Longline category landings.

Under § 635.28(a)(1), NMFS is required to file a closure notice with the Office of the Federal Register when a BFT quota is reached or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year, or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notice. In 2012, NMFS announced closure of the Longline category southern area BFT fishery and northern area BFT fishery, effective May 29, 2012 (77 FR 31546, May 29, 2012) and June 30, 2012 (77 FR 38011, June 26, 2012), respectively.

Based on the best available landings information for the incidental Longline category BFT fishery (i.e., 16.2 mt in the northern area and 27.1 mt in the southern area as of May 31, 2013), NMFS projects that the Longline category northern and southern area BFT subquotas will be reached by the effective date of this action. Given the extended duration of longline fishing trips, NMFS has determined that a closure of the Longline category BFT northern area fishery (other than the NED) and the southern area fishery (including the Gulf of Mexico) is warranted at this time with 7 days' advance notice. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT north and south of 31°00' N. lat., including the Gulf of Mexico, and other than the NED, by vessels permitted in the Atlantic tunas Longline category must cease at 11:30 p.m. local time on June 25, 2013 and will be prohibited through December 31, 2013. While pelagic longline fishing for swordfish and other target species may continue in the northern and southern Longline areas, BFT may no longer be retained, possessed, or landed by longline vessels in those areas. The intent of this closure is to prevent overharvest of the Longline category northern and southern area BFT subquotas.

The incidental Longline fishery for BFT in the NED, an area far offshore the northeastern United States, remains open at this time. NMFS will continue to monitor incidental Longline category BFT landings from the NED against the 25 mt allocated for that area and may take further action, if necessary. Any subsequent adjustments to the Longline category fishery for 2013 would be published in the Federal Register. In addition, fishermen may call (978) 281-9260, or access [www.hmspermit.noaa.gov](http://www.hmspermit.noaa.gov), for fishery updates. NMFS will account for all 2013 U.S. landings at the end of the year,



make further year-end adjustments if and as needed, and report total 2013 landings along with the preliminary 2013 estimate of dead discards to ICCAT in 2014.

#### Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Magnuson-Stevens Act, ATCA, and other applicable law, and is necessary to achieve domestic management objectives under the 2006 Consolidated HMS FMP.

The Assistant Administrator for Fisheries (AA) finds good cause under 5 U.S.C. sec. 553(d)(3) to reduce the 30-day delay in effective date for the 2013 BFT quota specifications and fishery closures in this action to seven days. A reduced, 7-day delay in effectiveness will allow NMFS to close a portion of the BFT fishery based the adjusted 2013 subquotas, while allowing time to notify pelagic longline vessels that are already on the water. This delay is contrary to the public's interest, because without it, the codified BFT quota and subquotas would remain in effect, and the United States would very quickly exceed its available quota for the year in certain quota subcategories, which could create enforcement problems this year in the relevant international forum (ICCAT) and exacerbate management difficulties into next year.

Regarding the closure notice, the AA finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, the closure portion of the action for the following reasons:

Prohibiting further BFT landings against the Longline category northern and southern area subquotas is necessary to prevent overharvest of the Longline northern and southern area BFT subquotas in the final 2013 quota specifications. The 2012 dead

discard estimate became available only at the end of May 2013. NMFS acted immediately following receipt of these data, in combination with the latest landings data for 2013, to determine whether additional action was needed to remain within the subcategory quotas this year, and it is only because of external circumstances (i.e., the availability of data), rather than any Agency delay, that the waiver is needed for this portion of the action. Given the extended duration of longline fishing trips, we have determined that a closure of the Longline category BFT northern area fishery (other than the NED) and the southern area fishery (including the Gulf of Mexico) is warranted at the time of the filing of the final specifications with 7 days' advance notice. NMFS provides notification of closures by publishing the notice in the Federal Register, e-mailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on [www.hmspermits.noaa.gov](http://www.hmspermits.noaa.gov).

These fisheries are currently underway, and delaying this action would be contrary to the public interest as it could result in excessive BFT landings, which could have adverse effects on the stock and/or may result in future potential quota reductions for the Longline category. NMFS must close the Longline category northern and southern area fisheries to landings before large medium and giant BFT exceed the available subquotas for those areas. The quotas as adjusted in this action are consistent with HMS regulations, and are a logical outgrowth of the proposed action. The final rule distributes the available underharvest differently than proposed, but is within the range of actions we told the public was possible in the final rule and requested comment on that possibility. NMFS discussed at the proposed rule stage the possibility that NMFS may

need to close the Longline category fishery to BFT retention based on codified quotas and account fully for landings to date in the final specifications, as occurred in 2012. Therefore, the regulated community reasonably could have anticipated both the resultant moderate changes in amounts and distribution and the Longline category closures.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment regarding the closure portion of this action. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to reduce the 30-day delay in effectiveness of the final adjusted 2013 BFT quota specifications to 7 days.

The rule to implement the final BFT quota specifications is exempt from the procedures of E.O. 12866. The action to close the Longline category northern and southern area fisheries is being taken under §§ 635.27(a)(3) and 635.28(a)(1), and is exempt from review under E.O. 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in

complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS has prepared a brochure summarizing fishery information and regulations for Atlantic tuna fisheries for 2013. This brochure also serves as the small entity compliance guide. Copies of the compliance guide are available from NMFS (see ADDRESSES).

Authority: 16 U.S.C. 971 et seq. and 1801 et seq.

Dated: June 13, 2013.

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Alan D. Risenhoover,  
Director, Office of Sustainable Fisheries,  
performing the functions and duties of the  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

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